IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 145 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTILAL CHATRABHUJ SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 145 of 1998

MR IM MUNSHI for Petitioner Nos. 1-3

MR ND GOHIL APP for Opponent No. 1 - State

RULE SERVED for Opponent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 15/01/2003

C.A.V. JUDGEMENT

1. This is a Criminal Revision Application filed under Section 397, read with Section 401 of the Criminal Procedure Code, 1973 [for short "Cr.P.C.], by the

original accused of Criminal Case No.1406 of 1993 conducted, tried and disposed of by the learned 3rd Joint Civil Judge [S.D.] and Judicial Magistrate [F.C.], Surendranagar [for short the "learned Magistrate of the trial Court"]. They have challenged the correctness, legality, propriety and regularity of common judgment Ex.12 dated 06.01.1998 rendered by the Additional Sessions Judge, Surendranagar [for short the "learned Appellate Judge"] in Criminal Appeal No.10 of 1996 by which, judgment of conviction and sentence dated 20.01.1996 below Ex.4 in Criminal Case No.1406 of 1993 has been confirmed.

2. In this present Criminal Revision Application, the revision criminal petitioners were the accused, whereas the revision opponent Nos. 1 and 2 were prosecution and the original complainant, respectively, in Criminal Case No.1406 of 1993. For the sake of convenience, the parties will be referred to hereinafter as the prosecution, complainant and accused, at appropriate places.

3. The facts leading to this present Criminal Revision Application in a nutshell, are as follows :-

3.1 The accused No.3 is a Firm and accused Nos.1 and 2 are the partners in accused No.3 - Firm.

3.2 The complainant is an Inspector appointed under Section 19 of the Minimum Wages Act, 1948 [Act No.11 of 1948] [for short the "Act"] as amended by The Minimum Wages (Gujarat Amendment) Act, 1961 (Gujarat Act No.22 of 1961) by the State Government. The accused No.3 - Firm is an employer. within the meaning of Section 2(e) of the Act. The accused No.3 is a Company, within the meaning of clause (a) of explanation to Section 22-C of the Act and accused Nos.1 and 2 being partners are Directors, within the meaning of clause (b) of explanation to Section 22-C of the Act.

3.3 On or about 11.05.1993, the complainant in his capacity as an Inspector under Section 19 of the Act, visited the establishment of accused No.3 - Firm. In exercise of the powers conferred by Section 30 of the Act, the State Government has made the Rules namely, the Gujarat Minimum Wages Rules, 1961 [for short the "Rules"]. As per the case of the prosecution, the accused No.3 had employed an employee within the meaning of Section 2(i) of the Act. It is the case of the prosecution that the accused No.3 - Firm was statutorily bound to keep and maintain the registers and records, as

per Rule 26(1) of the Rules. On visit being paid by the complainant, it was found that the accused No.3 had not kept and maintained the registers of wages and, thereby the accused No.3 had contravened Rule 26(1) of the Rules read with Section 18 of the Act and this contravention is punishable under Section 22 of the Act. It is also the case of the prosecution that the accused No.3 has committed an offence, as if, it is an offence committed by the accused No.3 - Company, within the meaning of clause (a) explanation to Section 22-C of the Act and accused Nos.1 and 2 who are partners being Directors of the said accused No.3 - Company, are also liable to be punished.

3.4 For the aforesaid facts, the complainant lodged his private complaint in the Court of the learned Chief Judicial Magistrate, Surendranagar and that complaint came to be registered as Criminal Case No.1406 of 1993. That Criminal Case No.1406 of 1993 was assigned to the learned Magistrate of the trial Court. It appears from the record that the learned Magistrate of the trial Court conducted the case, by adopting a procedure contained in Chapter XX [Sections 251 to 258] of Cr.P.C. and, therefore, on 25.10.1993, the learned Magistrate of the trial Court recorded the pleas of all the accused under Section 251 of Cr.P.C. at Ex.4. All accused pleaded not guilty to the charge and they claimed to be tried. Thereupon, Pareshkumar Samantbhai, examined himself as prosecution witness at Ex.12 and during the course of recording his evidence, he tendered certain documents, which were exhibited in his deposition. On completion of the evidence of prosecution, the learned Magistrate of the trial Court brought to the notice of and explained the circumstances appearing in evidence against them to the accused and, thereby he recorded further statement under Section 313 of Cr.P.C. The defence of all accused is of complete denial. Thereafter, the learned Magistrate of the trial Court, after analyzing and appreciating the evidence led by the prosecution and after hearing the arguments of the learned advocates for both the parties, rendered his judgment dated 20.01.1996 below Ex.4 in Criminal Case No.1406 of 1993 and by that judgment, he convicted all the three accused under Section 255(2) of Cr.P.C. for contravention of Section 26(1) of the Rules and sentenced each accused to pay a fine of Rs.250/-- and in default of fine, to undergo further simple imprisonment for 2 days.

4. Being aggrieved against and dissatisfied with the said judgment of the conviction and sentence, all three accused preferred Criminal Appeal No.10 of 1996 to the

Court of Sessions at Surendranagar. The learned Appellate Judge, after analyzing the evidence and re-appreciating the evidence of the prosecution on record and after hearing the arguments of the learned advocates for both the parties, by dismissing that Criminal Appeal No.10 of 1996 vide his judgment Ex.12 dated 06.01.1998 confirmed the judgment Ex.4 dated 20.01.1996 of the conviction and sentence rendered by the learned Magistrate of the trial Court in Criminal Case No.1406 of 1993.

5. Being aggrieved against and dissatisfied with the said judgment Ex.12 dated 06.01.1998 rendered in Criminal Appeal No.10 of 1996 by the learned Additional Sessions Judge, Surendranagar, the original accused/appellants before the Court of Appellate Judge, have preferred this present Criminal Revision Application under Section 397 read with Section 401 of Cr.P.C., and challenged the correctness, legality, propriety and regularity of the said judgment Ex.12 of the learned Appellate Judge.

6. I have heard Mr.I.M.Munshi, learned advocate for the criminal revision petitioners and Mr.N.D.Gohil, learned APP for the revision Opponent No.1 i.e. State of Gujarat. The revision opponent No.2 being a complainant has remained absent, though duly served with the notice of rule of this Court.

7. Mr.I.M.Munshi, learned advocate for the criminal revision petitioners has taken me through the judgment below Ex.4 of the learned Magistrate of the trial Court as well as the judgment Ex.12 rendered by the learned Appellate Judge. He has furnished a true copy of the complaint and a true copy of deposition of Pareshkumar Samantbhai. Mr.Munshi has argued that the prosecution has failed to prove the fact that at the time of visit, an employee was present in the establishment. He has further argued that the visit of complainant is doubtful. He has further argued that though the notices were served on all the accused for making compliance of Rule 26(1) of the Rules, no notices were served on all the accused before lodging the complaint against the accused, so as to fulfill the requirements of the principle of natural justice. He has further argued that the prosecution has failed to prove that the accused Nos.1 and 2 were the partners in accused No.3 - Firm at the relevant point of time. He has further argued that looking to the evidence of the complainant, the complainant himself is not sure as to whether the accused have complied with the requirements of the Rule 26(1) of the Rules, by showing the register and record of the establishment of the

accused No.3 to the complainant and, therefore, the benefit of doubt should have been given to accused by the learned Magistrate of the trial Court. He has further argued that the accused Nos.1 and 2 were not questioned in their further statements recorded under Section 313 of Cr.P.C. about their status in the Firm. He has further argued that the prosecution has totally failed to prove the case against the accused and, therefore, the learned Magistrate of the trial Court ought to have acquitted the accused from the case. He has further argued that the learned Appellate Judge has not considered the arguments advanced by the accused/appellants and, therefore, the judgment Ex.12 of the learned Appellate Judge is not legal, correct and proper and, therefore, that judgment Ex.12 of the learned Appellate Judge is required to be set aside by this Court and the accused be acquitted from the case. In support of his arguments, Mr.I.M.Munshi has placed reliance on the following authorities.

[1] Balu Ramu Machhi v/s. State of Gujarat, reported in 1985 (2), 26(2) G.L.R. 933.
[2] State of Gujarat v/s. Shah Acharya & Co. & Ors., reported in 1981, 22 G.L.R. 105.
[3] Deepak Sarkar and another v/s. State of Bihar and another, reported in 1977 Cri. L.J. 1437.

8. Mr.N.D.Gohil, learned APP representing the revision opponent No.1 i.e. State of Gujarat has supported the judgment of both the courts below. He has argued that there are concurrent and consistent findings on facts arrived at by both the courts below. He has further argued that looking to the scope and ambit of Section 397 read with Section 401 of Cr.P.C., the scope of Criminal Revision Application is very much circumscribed and restricted and this Court is not expected to re-appreciate the evidence, particularly on the point with regard to findings on facts. He has argued that this Court is not expected to substitute its own findings by re-appreciating the evidence, as if it is a trial Court particularly, when the findings of facts are not manifestly erroneous and perverse. In short, he has argued that this present Criminal Revision Application is devoid of merits and it requires to be dismissed. In support of his arguments, he has cited a decision of the Hon'ble Supreme Court rendered in the case of U.P. Pollution Control Board v/s. M/s. Mohan Meakins Ltd. and Others reported in J.T. 2000 (3) S.C. 466.

9. Before I deal with the submissions of the rival parties, I would like to place on record the legal

position with regard to the scope and ambit of such Criminal Revision Application, where the learned Appellate Judge has confirmed the judgment of the conviction of the trial Court. In case of Kerala Vs. Puttumana Illath Jathavedan Namboodiri, reported in (1999) 2 S.C.C. 452, it has been held as under :-

> "In its revisional jurisdiction, the High Court can call for and examine the record and any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

10. What is appreciation of the evidence is well explained in the case of Narain Prasad v. The State of Rajasthan, reported in AIR 1978 Rajasthan 162 a Full Bench Decision. In para-25, it has been as follows :-

> "The revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently, there has been a flagrant miscarriage of justice. The process of appraising the evidence led by two parties can be equated almost to the process of holding a balance, the time honoured symbol of justice. Sometimes, when the two pans of the balance are seemingly equal, even a slight evidence, circumstantial or otherwise, tilts the balance on one side and thereby probabilises the case of one party as against the other. In this process of holding the balance, what pieces in favour of one party is dependent on the evidence available in a given case. But asking the revisional court to say that this piece of evidence should have

weighed more than the other is nothing more than seeking a reassessment of evidence. Appreciation of evidence is a mental process involving selection, assessment and conclusion. Which statement ought to weigh and how much, cannot be rigidly laid down."

11. Keeping in mind, the aforesaid legal position with regard to the scope and ambit of Section 397 read with Section 401 of Cr.P.C. and powers of the revisional Court and principle for appreciation of evidence, now I will deal with the submissions of Mr.I.M.Munshi, learned advocate for the criminal revision petitioners. Mr.Munshi has advanced the arguments covering the following points, which are related to the question of facts ;

[a] No employee was there, when the complainant visited the establishment of accused No.3 - Firm.

[b] Visit of complainant is doubtful.

[c] Before lodging the complaint, no notices were served on the accused.

12. Mr.Munshi has argued that after visit of the establishment of the accused No.3 - Firm, the complainant had given notices requiring the accused to cure the irregularities with regard to non-keeping and non-maintaining the record and registers, for which the complainant has produced an A.D. receipt Ex.14 on record, but this A.D. receipt Ex.14 does not make clear as to who signed that receipt. As per the submissions of Mr.Munshi, it is not proved by the prosecution that such notices were in fact received by the accused Nos.1 and 2. He has argued that the prosecution has failed to prove that the accused Nos.1 and 2 were the partners of the accused No.3 - Firm at the relevant point of time.

13. The aforesaid points are relating to the facts. The learned Magistrate of the trial Court has critically analyzed the evidence on record and, thereafter, he came to a conclusion based on facts that the accused have contravened the provisions of Rule 26(1) of the Rules and, therefore, for that contravention, he has convicted all the three accused. On appeal being filed by all three accused, the learned Appellate Judge again analyzed the evidence on record and after re-appreciation of evidence he was in agreement with the reasonings of the learned Magistrate of the trial Court and by rendering his detailed judgment Ex.12, he has upheld the judgment

of the conviction and sentence rendered by the learned Magistrate of the trial Court.

14. I have carefully examined a copy of the complaint and the copy of deposition of witnesses examined by the prosecution, which are supplied by Mr.I.M.Munshi and the judgments of both courts below. I am satisfied that both the courts below have, keeping in mind, the well settled principles of law with regard to appreciation of the evidence, correctly appreciated the evidence on record in its proper perspective and came to a conclusion that the accused have committed an offence with regard to contravention of Rule 26(1) of the Rules. In no case, it can be said that the impugned judgment Ex.12 of the learned Appellate Judge is perverse meaning thereby the findings are based on "no evidence". That findings cannot be said to be illegal or incorrect. Still, however, this Court has tried to deal with the submissions of Mr.I.M.Munshi on the point touching the facts. If we read the deposition of Pareshkumar Samantbhai Ex.12, we find that this witness was serving as a Government Labour Officer at Surendranagar, during the period between 30.06.1992 and 24.09.1993 and that it was his one of the duties to see that the provisions of the Act are complied with by the employers. He has further deposed that while, performing his duty, he visited the establishment of the accused No.3 - Firm on 11.05.1993 and that at that time, one Shri Makvana Ramniklal was found working in the establishment. Now this fact with regard to presence of Shri Makvana Ramniklal in the establishment of accused No.3 - Firm, at the time of visit of the complainant, is not challenged in the cross-examination. When a particular fact is deposed by the witness on oath and if it is found that it is neither controverted nor challenged by the accused then it is presumed that the fact is accepted by the accused. He has further deposed that during the course of visit of the complainant, it is found that the accused No.3 - Firm has not kept and maintained the registers of wages. A case has been suggested by the accused to this witness that the registers were shown to the complainant. This suggestion has been denied by the witness. Thus on reading evidence of this witness as a whole, it is clear that the learned Magistrate of the trial Court has rightly observed in para-4 of his judgment Ex.4 that it was a defence of the accused that at the relevant point of time, the registers were shown to the complainant. Thus, looking to the defence advanced by the accused before the trial Court, with regard to visit of the complainant to the establishment of the accused No.3 Firm is not in dispute. A person named Makvana Ramniklal was

found working in the establishment of the accused No.3 Firm and this fact is not challenged in the cross-examination by the accused. Thus, there was an employee present in the establishment of the accused No.3 - Firm. The accused No.3 - Firm was supposed to maintain the register of wages. The complainant being an Inspector appointed under the Act, visited the establishment of the accused No.3 - Firm and during his visit, it was found that the registers of wages were not kept and maintained by the accused No.3 - Firm. Thus, what was found by the complainant at the time of his visit, was found by the complainant in exercise of his powers confirmed upon him under the Act. As per Section 114, illustration (e) of the Indian Evidence Act, official act is presumed to have been performed as per the procedure prescribed and, therefore, the visit of the complainant, cannot be said to be a doubtful visit.

15. It is an admitted fact that after visit of the complainant, he addressed a notice Ex.13 to the accused and it was sent by registered post A.D. The A.D. receipt is produced at Ex.14. By the said notice, accused were called upon to comply with the requirements of Rule 26(1) of the Rules and, thereafter, the complainant lodged his complaint. When notice was received by the accused No.3, accused No.3 could have given a reply to the complainant that the complainant never visited the establishment of the accused No.3 as alleged to have been visited on 11.05.1993. The accused No.3 could have informed the complainant that the accused Nos.1 and 2 are not partners in the accused No.3 - Firm. Even in the cross-examination of the complainant, no case has been put by the accused, that accused Nos.1 and 2 are not partners in accused No.3 - Firm. As stated earlier, the learned Magistrate of the trial Court conducted the case, by adopting the procedure for summons case. The accused No.2 - Atulkumar Shantilal Shah has not stated in his further statement anything about the absence of his connection with accused No.3. The accused No.1 has given reply in his further statement recorded under Section 313 of Cr.P.C. In this statement also, the accused No.1 Shantilal Chatrabhuj Shah has not stated anything about the absence of his connection with the accused No.3. The case advanced by the accused Nos.1 and 2 in their further statements is of general denial. The accused Nos.1 and 2 have neither led any evidence in their defence nor have they examined themselves as defence witnesses. Thus, in absence of any material from the side of accused, the evidence of prosecution is found credible and creditworthy by the two courts below. Mr.I.M.Munshi has argued in such a way that he expected from this Court

that this Court should again re-appreciate the entire evidence on record and come to a different conclusion based on facts as if this Court is a trial Court. As discussed earlier, both the courts below have given concurrent and consistent findings based on facts and on the basis of such findings of facts, both courts below have come to a right conclusion. They have assigned cogent, plausible and possible reasons for arriving at such conclusion. This Court is in agreement with the reasons assigned by both the courts below. Thus, this Court is unable to agree with the submissions of Mr.I.M.Munshi that the judgment rendered by the learned Appellate Judge is erroneous and perverse. The citations submitted by Mr.Munshi are not discussed because that citations are based on facts of that particular cases. This Court agrees with the preposition of law laid down in that authorities. That preposition of law is not applicable to the facts and circumstances of this case and, therefore, that authorities are not discussed.

16. The decision on which Mr.N.D.Gohil has placed reliance is applicable to this case. Of course, that decision is with regard to the case for the offence punishable under the provisions of The Water [Prevention and Control of Pollution] Act, 1974. It has been held that where an offence under the Act has been committed by a Company every person who was in charge of and was responsible to the company for the conduct of the business of the Company is also made guilty by the statutory creation.

17. Herein this case also, Section 22(e) of the Act makes it clears that each and every partner of the firm is liable for contravention made by the accused No.3 Firm. Section 47 of the Water [Prevention and Control of Pollution] Act, 1974 is practically similar to Section 22-C(1) of the Act. In absence of any plea from the accused Nos.1 and 2, they are responsible for contravention of Rule 26(1) of the Rules, made by the accused No.3 - Firm, in view of Section 22-C(2) of the Act. Considering all the contextual facts and evidence on record, the case is proved by the prosecution beyond reasonable doubt. The learned Appellate Judge has rightly dismissed the Appeal preferred by the accused. In exercise of the revisional powers conferred on this Court, it is not possible for this Court to re-appreciate the evidence on the basis of which concurrent and consistent findings of facts, are given by both the Courts below.

18. For the foregoing reasons, this Criminal Revision

Application deserves to be dismissed and accordingly, it is dismissed. Rule is discharged.

[H. H. MEHTA, J.]

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